IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2173 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIVABHAI ARJANBHAI MARU

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 2173 of 2004

MR MP SHAH for Petitioner No. 1-4

MS. KRUTI M SHAH for Petitioner No. 1-4

MS MEETA PANCHAL ADDL PUBLIC PROSECUTOR for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 09/08/2004

ORAL JUDGEMENT

Rule. Ms.Meeta Panchal, learned APP and Mr.Yogesh Lakhani appear and waive service of Rule on behalf of respondent No.1 - State of Gujarat and respondent No.2 respectively.

2. By way of filing this petition under Section 482 of the Code of Criminal Procedure, the petitioners against whom an offence is registered being C.R.No.I-39 /2004 at Junagadh City "B" Division Police Station for commission of the alleged offence under Section 363 and 114 of the IPC on the accusation that they have kidnapped the minor Hemang, have prayed for quashing and setting aside the said FIR on the grounds stated in the petition.

3. Petitioner Nos.1 & 3 are maternal grand father and mother of the minor boy Hemang. Petitioner No.2 is uncle of the mother of said minor Hemang. Petitioner No.4 is maternal uncle of minor Hemang. Since said Hemang was residing with his Grand-parents and uncle, he came to see her mother at Porbandar from Junagadh where his mother is staying. Therefore, the complainant i.e. respondent No.2 herein who happens to be uncle of said minor Hemang filed a complaint before Junagadh City "B" Division Police Station against the present petitioners for commission of the alleged offence under Section 363 and 114 of the IPC, which has given rise to filing of the present petition.

4. Having heard Ms.Kruti Shah, learned advocate for the petitioners and Ms.Meeta Panchal, learned APP for respondent No.1 - State, so also, Mr.Yogesh Lakhani, learned advocate for respondent No.2 - original complainant and upon perusal of the averments made in the petition as well as FIR, and copies of the investigation papers supplied by Mr.N.D.Solanki, Head Constable, Junagadh City "B" Division Police Station and more particularly two statements of the minor boy Hemang, it appears that the minor boy Hemang had gone to his mother's house at Porbandar on his own accord and at his own volition. Therefore, averments made in the FIR do not appear to be true. So far as the investigation papers, are concerned, except two statements of said minor Hemang, nothing further has been brought to the notice of this Court, which unequivocally suggests that minor Hemang at his own accord and volition had gone to mother's house to see his mother at Porbandar. In view of aforesaid discussion, therefore, prima facie, no offence as alleged in the FIR, is made out against the present petitioners, hence, this Court is of the opinion that the complaint in question deserves to be quashed and set aside.

4. In view of discussion in foregoing paragraphs, the petition succeeds and the same is allowed accordingly. The impugned FIR being C.R.No.I-39 / 2004 registered with Junagadh City "B" Division Police Station for commission of the alleged offence under Section 363 and 114 of the IPC against the present petitioners, is hereby quashed and set aside.

Rule is made absolute accordingly.

Date : 9.8.2004 [A.M.Kapadia, J.]

#kailash#